

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-04-IH-0518
)	
)	
Global Teldata II, LLC)	NAL/Acct. No. 200632080005
)	
)	
Apparent Liability for Forfeiture)	FRN No. 0010865996
)	

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE AND ORDER**

Adopted: October 31, 2005

Released: October 31, 2005

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that a telecommunications provider, operating since 2003 and at least indirectly benefiting from the federal programs supporting the telecommunications industry since that time, apparently failed to meet its statutory and regulatory obligations relating to those programs. Based upon the facts and circumstances surrounding this matter, we conclude that this company is apparently liable for a total forfeiture of \$236,774.

2. We specifically find that Global Teldata II, LLC (“Global Teldata”) has apparently violated section 64.1195 of the Commission’s rules by willfully and repeatedly failing to register with the Commission until November 17, 2004.¹ We also find that Global Teldata has apparently violated section 54.711(a) of the Commission’s rules by failing to timely submit certain Telecommunications Reporting Worksheets (“Worksheets”) prior to November 17, 2004.² Finally, we find that Global Teldata has apparently violated section 254(d) of the Communications Act of 1934, as amended (the “Act”),³ and section 54.706(a) of the Commission’s rules by willfully and repeatedly failing to contribute to the Universal Service Fund (“USF”) on a timely basis in 2004 and 2005.⁴

3. We are resolved to ensure a level playing field for all companies that are required to contribute to the maintenance of our various Congressionally mandated programs, including the federal

¹ 47 C.F.R. § 64.1195.

² 47 C.F.R. §§ 54.711(a), 64.604(c)(5)(iii)(B).

³ 47 U.S.C. § 254(d).

⁴ 47 C.F.R. § 54.706(a).

universal service program. The failure of a carrier to fulfill its obligation to contribute to these programs has a direct and significant detrimental impact on the programs and on other industry participants because that failure removes from the base of contributions telecommunications revenues that otherwise should be included, thereby forcing other telecommunications carriers to shoulder additional costs associated with the programs. Thus, this *NAL* and others like it represent one element in a comprehensive approach to improving the efficacy and fairness of the universal service program as well as reducing waste, fraud and abuse in the program.

II. BACKGROUND

4. The Commission is charged by Congress with regulating interstate and international telecommunications and ensuring that providers of such telecommunications comply with the requirements imposed on them by the Act and our rules.⁵ The Commission also has been charged by Congress to establish, administer and maintain various telecommunications regulatory programs, and to fund these programs through assessments on the telecommunications providers that benefit from them. To accomplish these goals, the Commission established “a central repository of key facts about carriers” through which it could monitor the entry and operation of interstate telecommunications providers to ensure, among other things, that they are qualified, do not engage in fraud, and do not evade oversight.⁶ Commission rules require that, upon entry or anticipated entry into interstate telecommunications markets, telecommunications carriers register by submitting information on FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet.⁷ The Commission also requires telecommunications providers to submit financial information on annual and, subject to the *de minimis* exception,⁸ quarterly short-form Worksheets to enable the Commission to determine and collect the statutorily mandated program assessments.⁹

5. The Telecommunications Act of 1996 codified Congress’ historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable,

⁵ See, e.g., 47 U.S.C. § 151.

⁶ See *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024 (2000) (“*Carrier Selection Order*”).

⁷ 47 C.F.R. § 64.1195.

⁸ Pursuant to the *de minimis* exception, contributors that owe less than \$10,000 to the USF in any given year are not required to contribute to the fund or file Worksheets (annual or quarterly) for that year for purposes of the USF. 47 C.F.R. § 54.708. Based on Global Teldata’s reported revenue for 2003 as reported in its 2004 Form 499-A, it was a *de minimis* carrier in 2003. However, even though the *de minimis* exception excuses carriers from filing Worksheets for purposes of the USF, the rules still require carriers such as Global Teldata to file annual Worksheets for purposes of other regulatory programs, such as the Telecommunications Relay Service. *Id.* See also 47 C.F.R. § 64.604(c)(5)(iii)(B) (requiring common carriers to submit Worksheets for the TRS Fund).

⁹ See 47 U.S.C. §§ 225(d)(3); 254(d). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026.

quality telecommunications services.¹⁰ In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹¹ In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the Universal Service Fund based upon their interstate and international end-user telecommunications revenues.¹² Failure by some providers to pay their share into the Fund skews the playing field by giving non-paying providers an economic advantage over their competitors who must shoulder more than their fair share of the costs of the Fund.

6. The Commission has established specific procedures to administer universal service and other regulatory programs. A carrier must file Worksheets for the purpose of determining its USF and other regulatory fee program payments.¹³ These periodic filings trigger a determination of liability, if any, and subsequent billing and collection by the entities that administer the regulatory programs. USAC uses the revenue projections submitted on the quarterly filings to determine each carrier’s universal service contribution amount.¹⁴ Carriers are required to pay their monthly USF contribution by the date shown on their invoice.¹⁵ The Commission’s rules explicitly warn contributors that failure to file their forms or submit their payments potentially subjects them to enforcement action.¹⁶ Further, under the Commission’s “red light rule,” action will be withheld on any application to the Commission or request for authorization made by any entity that has failed to pay when due its regulatory program payments,

¹⁰ The Telecommunications Act of 1996 amended the Communications Act of 1934. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹¹ 47 U.S.C. § 254(d).

¹² 47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier’s projected, rather than historical, revenues. *Id.*

¹³ Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC. The filer identification number is then to be included on all further filings by the company and is used by the Commission and its administrators to track the carrier’s contributions and invoices. Unless they qualify for the *de minimis* exception, *see supra* note 8, interstate telecommunications carriers must file FCC Form 499-Q quarterly, reporting revenue information by February 1, May 1, August 1 and November 1 of each year, and FCC Form 499-A annually, by April 1 of each year. *See* Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration and Local Number Portability Support Mechanisms, FCC Form 499, April 2004, at 9.

¹⁴ Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. *See Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T, Report and Order and Order on Reconsideration*, 16 FCC Rcd 5748 (2001); 47 C.F.R. § 54.709(a).

¹⁵ *See Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896, ¶ 5 (2003); 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”). *See, e.g.*, “Proposed Third Quarter 2003 Contribution Factor,” *Public Notice*, 18 FCC Rcd 11442 (WCB 2003) (“Contribution payments are due on the date shown on the [USAC] invoice.”). The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC. *See* 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). A carrier that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimis*. *Globcom, Inc.*, 18 FCC Rcd at 19896, ¶ 5 & n.22. The instructions for the Telecommunications Reporting Worksheet include tables for carriers to determine their annual contributions. Global Teldata qualified for the *de minimis* exception in 2003 but not thereafter.

¹⁶ 47 C.F.R. § 54.713.

such as USF contributions, and if payment or payment arrangements are not made within 30 days from notice to the applicant, such applications or requests will be dismissed.¹⁷

7. Global Teldata began operations on April 1, 2003 as a reseller of local exchange service and intrastate, interstate, and international interexchange service.¹⁸ Global Teldata II, LLC was formed in a corporate reorganization of a predecessor entity, Global Teldata Inc., effective April 1, 2003.¹⁹ The predecessor, Global Teldata Inc., had never registered with the Commission.

8. In 2004, the Enforcement Bureau (“Bureau”) audit staff sought to identify resellers of telecommunications service that failed to register as telecommunications service providers with the Commission, and, thus, may also have failed to satisfy various Commission program requirements.²⁰ To identify such resellers, the Bureau audit staff compared lists of resellers provided by wholesale service providers against the Commission’s central repository of registered telecommunications service providers with filer identification numbers. If a reseller did not appear to have an identification number, the audit staff sent an inquiry to that reseller.

9. On March 30, 2004, the Bureau’s audit staff sent a letter to Global Teldata requesting information pertaining to Global Teldata’s compliance with section 64.1195 of the Commission’s rules.²¹ Global Teldata responded to the March 30, 2004 Audit Letter on May 25, 2004,²² briefly stating that it believed it was *de minimis* for USF purposes in 2003.²³ It did not register or file any periodic Worksheets at this time or in the following five months.

10. By late October 2004, Global Teldata had still not registered with the Commission or filed any Worksheets, and the Bureau therefore issued a letter of inquiry to it on October 28, 2004.²⁴ The October 28, 2004 LOI directed Global Teldata, among other things, to submit a sworn written response to a series of questions relating to Global Teldata’s apparent failure to register and file Telecommunications Reporting Worksheets and to make mandated federal telecommunications regulatory program payments. Global Teldata responded to the October 28, 2004 LOI on November 17, 2004.²⁵ In the November 17,

¹⁷ 47 C.F.R. § 1.1910. The rule went into effect on November 1, 2004. See “FCC Announces Brief Delay in Enforcement of Red Light Rule,” *Public Notice*, 19 FCC Rcd 19452 (2004).

¹⁸ See Letter from Darius B. Withers, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, to Gerald H. Chakerian, Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated November 17, 2004 (“November 17, 2004 LOI Response”) at 1.

¹⁹ See *id.*

²⁰ See 47 C.F.R. § 64.1195(a).

²¹ See Letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Global Teldata II, LLC, dated March 30, 2004 (“March 30, 2004 Audit Letter”).

²² See E-mail from Erin R. Swansiger, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, to Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated May 25, 2004.

²³ See note 8, *supra*, regarding the *de minimis* exception for filing if a carrier’s USF contribution in any given year is less than \$10,000.

²⁴ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Erin R. Swansiger, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, dated October 28, 2004 (“October 28, 2004 LOI”).

²⁵ November 17, 2004 LOI Response (see note 18, *supra*).

2004 LOI Response, Global Teldata reiterated that it believed it was *de minimis* for USF purposes in 2003 and that it was unaware it must file for the other programs notwithstanding a *de minimis* USF obligation.²⁶ In addition, Global Teldata represented that in the first week of November 2004, it received its final revenue figures for October 2004 which, for the first time, placed it over the *de minimis* threshold for USF contributions.²⁷ Global Teldata also stated that, through a billing software package provided by a third-party vendor, it automatically billed and collected payments for the USF from its end-user customers.²⁸

11. On November 17, 2004, the same day that Global Teldata filed the November 17, 2004 LOI Response, it late-filed an initial 2004 Form 499-A²⁹ and an initial quarterly Worksheet for the first quarter of 2005, due November 1, 2004.³⁰ Since November 17, 2004, Global Teldata has timely filed all subsequent annual and quarterly Worksheets. Global Teldata began paying invoiced monthly USF contributions on February 14, 2005 and paid a total of \$53,548 in several monthly installments for invoiced USF adjustments attributable to 2004.

12. On June 28, 2005 and August 17, 2005, the Bureau issued follow-up LOIs to Global Teldata,³¹ and Global Teldata responded on July 8, 2005³² and August 29, 2005.³³ The August 29, 2005 LOI Response indicated that Global Teldata's actual international and interstate telecommunications revenue from end users for January to October 2004 was \$722,368, over three times the amount of \$204,016 originally identified in the November 17, 2004 LOI Response. The revised amount was larger because Global Teldata did not previously include USF charges that it had been recovering through its

²⁶ See *id.* (Inquiry Nos. 7-11). For a description of the *de minimis* exception, see note 8, *supra*.

²⁷ See *id.* (Inquiry Nos. 7-8) and Exhibits E & F. These responses indicated that total telecommunications revenue in 2003 was \$99,087 and cumulative telecommunications revenue from January to October 2004 was \$204,016 (Global Teldata did not provide a month-by-month breakdown of these revenues).

²⁸ See *id.* (Inquiry No. 14) and Exhibit G. Global Teldata stated that it collected \$27,459 for the USF in 2003 and \$42,784 for the USF in 2004. It did not specifically state whether it was aware of these collections at the time.

²⁹ See *id.* (Inquiry Nos. 7-8) and Exhibit E. This filing was apparently intended to serve both as a late-filed registration that had been due since the beginning of business on April 1, 2003, and as a late-filed annual 2004 Form 499-A Worksheet for 2003 that had been due since April 1, 2004. Global reiterated here that it was a *de minimis* carrier for the year 2003.

³⁰ See *id.* (Inquiry No. 8) and Exhibit F. This filing was designated as a quarterly Worksheet due on November 1, 2004.

³¹ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Darius B. Withers, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, dated June 28, 2005 ("June 28, 2005 LOI"); Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Darius B. Withers, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, dated August 17, 2005 ("August 17, 2005 LOI").

³² See Letter from Darius B. Withers, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, to Gerald H. Chakerian, Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 8, 2005 ("July 8, 2005 LOI Response").

³³ See Letter from Darius B. Withers, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, to Gerald H. Chakerian, Attorney, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 29, 2005 ("August 29, 2005 LOI Response").

third-party billing software and subscriber line charges that it had been recovering in other line items.³⁴ The August 29, 2005 LOI Response further showed that the correct amount of international and interstate telecommunications revenue from end users for the entire year 2004 was \$868,542.³⁵ Finally, the August 29, 2005 LOI Response indicated that cumulative telecommunications revenue for the first two months of 2004 was \$128,785, already in excess of the annual *de minimis* level.³⁶

III. DISCUSSION

13. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁷ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.³⁸ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,³⁹ and the Commission has so interpreted the term in the section 503(b) context.⁴⁰ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁴¹ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.⁴² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁴³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁴⁴ As set forth below, we conclude under this standard that Global Teldata is apparently liable for a forfeiture for its apparent willful and repeated violations of section 254(d) of the Act⁴⁵ and sections 54.706(a), 54.711(a), and 64.1195 of the Commission’s rules.⁴⁶

³⁴ *Id.* at 1 and Exhibit A. Global Teldata’s first quarterly Worksheet that was late-filed on November 17, 2004 contained this same error. See July 8, 2005 LOI Response at Exhibit A; November 17, 2004 LOI Response at Exhibit F.

³⁵ See July 8, 2005 LOI Response at Exhibit B. This amount is consistent with the 2005 Annual Worksheet, filed on March 31, 2005, that served as a true-up for 2004.

³⁶ See August 29, 2005 LOI Response at Exhibit A.

³⁷ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

³⁸ 47 U.S.C. § 312(f)(1).

³⁹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴⁰ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

⁴¹ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

⁴² *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

⁴³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁴⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”) (forfeiture paid).

⁴⁵ 47 U.S.C. § 254(d).

⁴⁶ 47 C.F.R. §§ 54.706(a), 54.711(a), 64.1195.

14. The fundamental issues in this case are whether Global Teldata apparently violated the Act and the Commission's rules by: (1) willfully or repeatedly failing to register pursuant to section 64.1195 of the Commission's rules;⁴⁷ (2) willfully or repeatedly failing to timely file Telecommunications Reporting Worksheets; and (3) willfully or repeatedly failing to make requisite contributions toward the Universal Service Fund when due. We answer these questions affirmatively. Based on a preponderance of the evidence, we conclude that Global Teldata is apparently liable for a forfeiture of \$236,774 for apparently willfully and repeatedly violating section 254(d) of the Act,⁴⁸ and sections 54.706(a), 54.711(a), and 64.1195 of the Commission's rules.

15. Specifically, we propose the following forfeitures for apparent violations within the last year: (1) \$100,000 for failure to register pursuant to section 64.1195 of the Commission's rules;⁴⁹ (2) \$50,000 for failure to file the quarterly Telecommunications Reporting Worksheet due on November 1, 2004 on a timely basis; and (3) \$86,774 for failure to make three monthly USF contributions on a timely basis. Although we propose forfeitures only for apparent violations within the last year, we discuss below the history of Global Teldata's noncompliance in the prior year as useful background, to demonstrate the scope of Global Teldata's misconduct, and the context of the misconduct that is within the statute of limitations period and thus covered by this *NAL*.

A. Registration with the Commission

16. We conclude that Global Teldata has apparently violated section 64.1195(a) of the Commission's rules by failing to register with the Commission from at least April 1, 2003 until November 17, 2004.⁵⁰ Global Teldata's failure to register constitutes a clear violation of a vital Commission rule. Section 64.1195(a) of the Commission's rules unambiguously requires that all carriers that provide, or plan to provide, interstate telecommunications services register with the Commission by submitting specified information.⁵¹ Although Global Teldata has been providing interstate telecommunications services for several years, it failed to register in accordance with section 64.1195(a) until November 17, 2004, over seven months after receiving the initial March 30, 2004 Audit Letter, and only after receiving the additional October 28, 2004 LOI. As a result of its misconduct, Global Teldata operated for a significant period without participation in any of the programs tied to registration. As an interstate telecommunications carrier, Global Teldata had a clear and affirmative duty to apprise itself of, and satisfy, its federal obligations.⁵²

⁴⁷ 47 C.F.R. § 64.1195.

⁴⁸ 47 U.S.C. § 254(d).

⁴⁹ 47 C.F.R. § 64.1195.

⁵⁰ As indicated above, Global Teldata was formed in a corporate reorganization of a predecessor entity on April 1, 2003. *See supra* ¶ 7. That entity had not registered with the Commission, *see supra* note 19, such that Global Teldata's period of noncompliance is likely to be even longer, as the registration requirement became effective in 2001. *See* 66 Fed. Reg. 17083 (March 29, 2001) (announcing that OMB-approved information collection requirement in section 64.1195 would take effect on April 2, 2001).

⁵¹ 47 C.F.R. § 64.1195. The Commission adopted the registration requirement in section 64.1195(a) after finding that such a requirement would enable it to better monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming activity, and, among other things, would enhance the Commission's ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming. *See Carrier Selection Order*, 15 FCC Rcd at 16024 ¶ 62.

⁵² *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17099, ¶ 22 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC (continue...)

17. We view Global Teldata's apparent failure to register for a significant period as a serious dereliction of its responsibilities under the Act and our rules. A carrier's compliance with the Commission's registration requirement is critical to the administration of the USF and other programs, and to fulfilling Congress' objectives in section 254(d) of the Act. As we noted above, a carrier's duty to register upon entry, or anticipated entry, into interstate telecommunications markets is essential to the fulfillment of the USF and other regulatory program missions because it identifies the company to the various program administrators and brings the company within the purview and oversight of those administrators. If a carrier never identifies itself as a telecommunications provider by properly registering under the Commission's rules, then neither the Commission nor the various program administrators can ascertain whether that carrier has fulfilled its regulatory obligations, including the requirement that carriers file Worksheets and contribute to USF and other regulatory programs. Moreover, the program administrators have no basis upon which to invoice the carrier for contributions. A telecommunications carrier that fails to register thus can operate outside of the Commission's oversight and evade its federal obligations to contribute toward the vital programs linked to registration.

18. The impact of a carrier's failure to register is no less severe where, as here, that carrier ultimately registers with the Commission. Although Global Teldata registered on November 17, 2004, and has filed required Worksheets beginning that month, Global Teldata delayed its registration for a substantial period of time and took no action until after receiving two letters from the Bureau.⁵³ The Commission has repeatedly stated that post-investigative corrective measures to address a violation do not eliminate a licensee's responsibility for the period during which the violation occurred.⁵⁴ Global Teldata's substantial delay in registering after receiving the Bureau's initial letter raises serious questions about its intention to do so absent threat of Commission action. Based on a preponderance of the evidence, therefore, we find that Global Teldata apparently has violated section 64.1195(a) of the Commission's rules by willfully and repeatedly failing to register until November 17, 2004.⁵⁵

B. Submission of Telecommunications Reporting Worksheets

19. We conclude that Global Teldata apparently has violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to file certain Telecommunications Reporting Worksheets, on a timely basis, until November 17, 2004.⁵⁶ Section 54.711(a) of the Commission's rules clearly establishes a carrier's obligation to file periodic Telecommunications Reporting Worksheets.⁵⁷ A

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Rcd 303 (1999) ("The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules."); *Telecom House, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-168, 2005 WL 2233570 (F.C.C.) at ¶ 28 (released September 13, 2005); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-145, 2005 WL 1750418 (F.C.C.) at ¶ 25 (released July 25, 2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-146, 2005 WL 1750420 (F.C.C.) at ¶ 30 (released July 25, 2005).

⁵³ See March 30, 2004 Audit Letter; October 28, 2004 LOI.

⁵⁴ *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71, (2002); *America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, ¶ 15 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388, ¶ 8 (2000).

⁵⁵ The proposed forfeitures in this *NAL* relate only to violations occurring within a year of release of this *NAL*.

⁵⁶ 47 C.F.R. § 54.711(a).

⁵⁷ *Id.* In addition, although the *de minimis* exception set forth in section 54.708 of the Commission's rules excuses carriers from filing the Worksheets for purposes of USF, that exception is explicitly qualified by other rules that *(continue...)*

carrier's failure to file these Worksheets as required has serious implications for the USF and other programs. As discussed above, the filing of a Telecommunications Reporting Worksheet prompts a determination of liability for, and subsequent billing and collection of, payments by the administrators of the Universal Service Fund and other regulatory programs. With regard to the federal universal service program in particular, the failure of a carrier such as Global Teldata to abide by its federal filing obligation has a direct and profound detrimental impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the federal universal service program.⁵⁸ Consequently, a carrier's failure to file required Worksheets frustrates the very purpose for which Congress enacted section 254(d) – to ensure that every interstate carrier “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁵⁹ Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's Universal Service program.

20. Based on a preponderance of the evidence, we find that Global Teldata apparently has violated section 254 of the Act⁶⁰ and section 54.711 of the Commission's rules⁶¹ by willfully and repeatedly failing to timely file required information with the Commission on multiple occasions until November 17, 2004. It is clear that Global Teldata was not *de minimis* for USF purposes as of the end of February 2004 when its cumulative interstate and international telecommunications revenue from end-users reached \$128,785. Failure to file Worksheets after that time is a violation of our rules. Global Teldata's failures to timely file Worksheets include its failure to file the quarterly Worksheet due on November 1, 2004, which is within the last year and is the basis for that component of the proposed forfeiture in this *NAL*.⁶²

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require carriers to file the annual Worksheet. *Id.* § 54.708. Thus, to the extent that Global Teldata's LOI responses indicate that the company qualified for the exception in calendar year 2003, and therefore was not required to file either annual or quarterly forms relating to revenues from that year for purposes of USF, the company was still required to file the annual form relating to that year for other regulatory programs. *See, e.g., id.* § 4.604(c)(5)(iii)(B).

⁵⁸ Sixty days prior to the start of each quarter, USAC is required to provide the Commission with a projection of the high cost, low income, schools and libraries, and rural health care funding requirements for the following quarter. *See* www.universalservice.org/overview/filings. Based on USAC's projection of the needs of the USF, and revenue projections from the registered carriers subject to universal service requirements, the Commission establishes a specific percentage of interstate and international end-user revenues that each subject telecommunications provider must contribute toward the USF. This percentage is called the contribution factor. The contribution factor, and, consequently, the amount owed to the USF by each affected telecommunications company, changes each quarter, depending on the needs of the USF and carrier-provided revenue projections. *See* www.fcc.gov/wcb/universal_service/quarter. Thus, in cases where a carrier, such as Global Teldata, fails to file required Worksheets reporting its revenue projections in a timely fashion, its revenues are excluded from the contribution base from which universal assessments are derived, and the economic burden of contributing falls disproportionately on carriers that have satisfied their reporting obligations.

⁵⁹ 47 U.S.C. § 254(d).

⁶⁰ 47 U.S.C. § 254.

⁶¹ 47 C.F.R. §§ 54.711, 64.604.

⁶² Moreover, as discussed in note 34, *supra*, Global Teldata's late-file Worksheet for this quarter understated telecommunications revenue by a wide margin. *See Globcom, Inc.*, 18 FCC Rcd at 19901-2, ¶¶ 19-20 (finding apparent liability for forfeiture for reporting inaccurate information).

C. Universal Service Contributions

21. We further conclude that Global Teldata apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by willfully and repeatedly failing to contribute to universal service support mechanisms on a timely basis on several occasions in 2004 and 2005.⁶³ Section 54.706(c) of the Commission's rules unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs."⁶⁴ Although section 54.708 of the rules exempts *de minimis* carriers from contribution, Global Teldata's applicable revenue exceeded the threshold beginning in February 2004.⁶⁵ As we previously have stated,

[c]arrier nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules. We consider universal service nonpayment to be a serious threat to a key goal of Congress and one of the Commission's primary responsibilities.⁶⁶

Based on a preponderance of the evidence, we find that Global Teldata apparently has violated sections 254(d) of the Act and 54.706 of the Commission's rules by willfully and repeatedly failing to timely make its monthly universal service contribution payments. Since Global Teldata did not make its first payment to the USF until February 2005, its failures to make monthly payments include three violations within the twelve months immediately preceding the date of this *NAL*, *i.e.*, the payments due November 15 and December 15, 2004 and January 15, 2005. Those three violations are the basis for that component of the proposed forfeiture in this *NAL*.

D. Proposed Forfeiture

22. Section 503(b)(1)(B) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁶⁷ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act.⁶⁸ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁶⁹

⁶³ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

⁶⁴ 47 C.F.R. § 54.706(c).

⁶⁵ See 47 C.F.R. § 54.708.

⁶⁶ *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903, ¶ 26 (2003).

⁶⁷ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

⁶⁸ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). Effective September 7, 2004, the Commission amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. See *Amendment of Section 1.90 of the Commission's Rules*, Order, 19 FCC Rcd 10945, 10946 ¶ 6 (2004).

⁶⁹ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, ¶ 27; 47 C.F.R. § 1.80(b).

23. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that occurred within one year of the date of this *NAL*.⁷⁰ Nevertheless, section 503(b) does not bar us from assessing whether Global Teldata's conduct prior to that time period apparently violated the Act or our rules in determining the appropriate forfeiture amount for those violations within the statute of limitations.⁷¹ Therefore, although we find that Global Teldata apparently violated the Act and our rules for several years, we propose forfeitures here only for violations that occurred within the last year.

24. This case involves a carrier's dual failures with respect to reporting obligations: first, Global Teldata failed to register until November 17, 2004; and second, it failed to submit any periodic Telecommunications Reporting Worksheets from the time its telecommunications revenues exceeded *de minimis* levels in early 2004 until November 17, 2004. In both cases, it effectively addressed compliance only after receiving two letters from the Bureau. We find Global Teldata's failure to discharge its federal reporting obligations to be particularly egregious. As we stated above, the registration and filing of Telecommunications Reporting Worksheets are fundamental to the implementation of our central repository of carriers and to the administration of multiple statutorily derived programs – including the Universal Service Fund. Where, as here, a carrier ignores its obligations by wholly failing to register for a long period – thereby affecting the time and manner in which these important federal programs are funded – it undermines the programs and thwarts the purposes for which Congress and the Commission established them.

25. Recently, we have held that a substantial forfeiture of \$100,000 is warranted for a carrier's failure to register with the Commission.⁷² We explained that “[t]his egregious behavior strikes at the core of our ability to implement and enforce the Act and our rules effectively, thus warranting a substantial forfeiture.”⁷³ A carrier that fails to register hampers “efficient and effective Commission enforcement by delaying detection of, and action against, its behavior . . . and imposes a substantial burden on the Commission, which can only identify such carriers through compliance review programs that require significant amounts of staff time and resources.”⁷⁴ Taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we conclude that this same reasoning accurately describes the impact of Global Teldata's misconduct, and that a proposed forfeiture of \$100,000 is therefore warranted.

26. In the past, we have held that a substantial forfeiture of \$50,000 is warranted for a carrier's failure to file a Telecommunications Reporting Worksheet for revenue reporting purposes.⁷⁵ As

⁷⁰ 47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3).

⁷¹ *See, e.g., Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-147, 2005 WL 1750417 (F.C.C.) at ¶ 24 (released July 25, 2005); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-145, 2005 WL 1750418 (F.C.C.) at ¶ 24 (released July 25, 2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-146, 2005 WL 1750420 (F.C.C.) at ¶ 28 (released July 25, 2005); *Globcom, Inc.*, 18 FCC Rcd at 19903; *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967).

⁷² *See Telecom House, Inc.*, 2005 WL 2233570 (F.C.C.) at ¶ 29 (released Sept. 13, 2005); *InPhonic, Inc.*, 2005 WL at 1750418 (F.C.C.) at ¶ 26; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 30.

⁷³ *See, e.g., InPhonic, Inc.*, 2005 WL at 1750418 (F.C.C.) at ¶ 26.

⁷⁴ *Id.* at ¶ 26.

⁷⁵ *Globcom, Inc.*, 18 FCC Rcd at 19905. *See also BCE Nexxia Corp.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-167, 2005 WL 2233569 (F.C.C.) at ¶ 19 (released Sept. 13, 2005); *Telecom House, Inc.*, 2005 (continue...)

in these past cases, we find that Global Teldata's willful and repeated failure to file periodic Telecommunications Reporting Worksheets is egregious. A carrier's obligation to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF and other regulatory programs. By ignoring its reporting obligations, Global Teldata has unilaterally shifted to compliant carriers and their customers the economic costs associated with the universal service and other regulatory programs. Therefore, we find that Global Teldata is apparently liable for a \$50,000 forfeiture for its failure to timely file one Worksheet within the last year; *i.e.*, the one due November 1, 2004.

27. Based on the facts above, it also appears that Global Teldata has failed to make timely requisite contributions into the Universal Service Fund for 2004, even though its telecommunications revenues clearly exceeded *de minimis* levels from early that year. Again, nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier's failure to make required universal service contributions frustrates Congress' policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.⁷⁶ The Commission has established a base forfeiture amount of \$20,000 for each month in which a carrier has failed to make required universal service contributions.⁷⁷ At a minimum, Global Teldata is apparently liable for a base forfeiture of \$60,000 for its willful and repeated failure to make three universal service contributions when due within the past year, *i.e.*, the payments due on November 15 and December 15, 2004, and January 15, 2005.

28. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on half of the company's unpaid contributions.⁷⁸ As explained above, USAC records show that Global Teldata owed \$53,548 for total 2004 USF contributions. Therefore, taking into account all of the factors enumerated in section 503(b)(2)(D) of the Act, we propose an upward adjustment of \$26,774 – half the amount that Global Teldata owed for 2004 USF contributions – for Global Teldata's apparent failure to make universal service contributions. We thus find Global Teldata liable for a total proposed forfeiture of \$86,774 for its apparent willful and repeated failures to make timely contributions into the Universal Service Fund.

IV. CONCLUSION

29. In light of the seriousness, duration and scope of the apparent violations, and to ensure that a company with substantial revenues such as Global Teldata does not consider the proposed forfeiture

(Continued from Previous Page)

WL 2233570 (F.C.C.) at ¶ 30; *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 25; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 27; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 31.

⁷⁶ See 47 U.S.C. § 254(d).

⁷⁷ See *Globcom, Inc.*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27. See also *BCE Nexxia Corp.*, 2005 WL 2233569 (F.C.C.) at ¶ 20; *Telecom House, Inc.*, 2005 WL 2233570 (F.C.C.) at ¶ 31; *Telecom Mgmt., Inc.*, Notice of Apparent Liability for Forfeiture, FCC 05-156, 2005 WL 1949643 (F.C.C.) at ¶ 17 (released Aug. 12, 2005); *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 26; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 28; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 32.

⁷⁸ See, e.g., *Globcom, Inc.*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27. See also *BCE Nexxia Corp.*, 2005 WL 2233569 (F.C.C.) at ¶ 21; *Telecom House, Inc.*, 2005 WL 2233570 (F.C.C.) at ¶ 32; *Telecom Mgmt., Inc.*, 2005 WL 1949643 (F.C.C.) at ¶ 18; *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 27; *InPhonic, Inc.*, 2005 WL 1750418 (F.C.C.) at ¶ 29; *OCMC, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 05-157, 2005 WL 1949644 (F.C.C.) at ¶ 19; *Teletronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 32.

merely “an affordable cost of doing business,”⁷⁹ we find that a proposed forfeiture in the amount of \$236,774 is warranted. As discussed above, this proposed forfeiture amount includes: (1) a total proposed penalty of \$100,000 for failing to register pursuant to section 64.1195 of the Commission’s rules;⁸⁰ (2) a total proposed penalty of \$50,000 for failing to file one Telecommunications Reporting Worksheet within the past year; and (3) a total proposed penalty of \$86,774 for failing to make three monthly universal service contributions when due within the past year.

30. We caution that additional violations of the Act or the Commission’s rules could subject Global Teldata to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of Global Teldata’s operating authority, including disqualification of Global Teldata’s principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁸¹ In addition, we note that, to the extent Global Teldata is ever found to be delinquent on any debt owed to the Commission (*e.g.*, has failed to pay all of its USF contributions), the Commission will not act on, and may dismiss, any application or request for authorization filed by Global Teldata, in accordance with the agency’s “red light” rules.⁸²

V. ORDERING CLAUSES

31. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁸³ and section 1.80 of the Commission’s rules,⁸⁴ Global Teldata II, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$236,774 for willfully and repeatedly violating the Act and the Commission’s rules.

32. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission’s Rules,⁸⁵ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Global Teldata II, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

33. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

34. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal

⁷⁹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099; *see also* 47 C.F.R. § 1.80(b)(4).

⁸⁰ 47 C.F.R. § 64.1195.

⁸¹ *See Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁸² 47 C.F.R. § 1.1910.

⁸³ 47 U.S.C. § 503(b).

⁸⁴ 47 C.F.R. § 1.80.

⁸⁵ *See* 47 C.F.R. § 1.80(f)(3).

Communications Commission, Room 4-A237, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

35. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

36. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁸⁶

37. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY AND ORDER shall be sent by certified mail, return receipt requested, to Darius B. Withers, Kelly Drye and Warren LLP, Counsel to Global Teldata II, LLC, 1200 19th Street N.W., Suite 500, Washington, D.C. 20036; and Edward M. O'Reilly, Controller, Global Teldata II, LLC, 4646 North Ravenswood Avenue, Chicago, Illinois 60640.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁶ See 47 C.F.R. § 1.1914.